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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

18 Cr. 802 (CM)

5 RICKY ROSA,

6 Defendant.

7 -----x

Sentence

8 February 11, 2020  
9 5:25 p.m.

10 Before:

11 HON. COLLEEN MCMAHON,

12 Chief Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the  
Southern District of New York

17 BY: DOMINIC A. GENTILE

Assistant United States Attorney

18  
19 EDWARD SAPONE

CHASE RUDDY

20 Attorneys for Defendant

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1 (Case called)

2 THE DEPUTY CLERK: Appearance.

3 MR. GENTILE: Good afternoon, your Honor. Dominic  
4 Gentile for the United States.

5 THE COURT: Good afternoon, Mr. Gentile.

6 MR. SAPONE: And good afternoon, your Honor. Edward  
7 Sapone and, with the court's permission, my associate Chase  
8 Ruddy. We are both here for Ricky Rosa, who is seated in the  
9 middle.

10 THE COURT: Good afternoon.

11 This matter is on for sentencing under Docket No. 18  
12 Cr. 802, United States of America v. Ricky Rosa, Mr. Rosa  
13 having been found guilty by plea to one count of conspiracy to  
14 distribute and possess with intent to distribute heroin, the  
15 lesser included offense, under 21 United States Code § 846 and  
16 841(b)(1)(C). This crime carries a statutory maximum sentence  
17 of 20 years' imprisonment, three years' supervised release, a  
18 fine of \$1 million, and a \$100 special assessment.

19 In connection with today's proceedings, I have  
20 received and reviewed the presentence report prepared by United  
21 States Probation Officer Christopher F. Paragano that was filed  
22 with the court on January 13, 2020. I have a letter on the  
23 stationery of the United States Attorney's office for the  
24 Southern District of New York dated February 4, 2020, in the  
25 nature of a sentencing memorandum from the government; and I

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1 have a very thick sentencing memorandum from Mr. Sapone and  
2 Mr. Ruddy, together with about 20 letters of support, very warm  
3 letters of support, plus information about the guidelines  
4 sentences, but a number of very warm letters of support for  
5 Mr. Rosa from family and friends, and I see many of them are  
6 here with us today.

7 Is there anything else I should have seen in writing  
8 prior to today's proceedings from the government?

9 MR. GENTILE: No, your Honor.

10 THE COURT: From the defendant?

11 MR. SAPONE: No, your Honor.

12 THE COURT: Has the government reviewed the  
13 presentence report?

14 MR. GENTILE: Yes, it has, Judge.

15 THE COURT: Any additions, deletions, or corrections?

16 MR. GENTILE: No, your Honor.

17 THE COURT: So I will hear the government on  
18 sentencing.

19 MR. GENTILE: Thank you, Judge. As noted in our  
20 submission, the government believes that a sentence within the  
21 stipulated guidelines range of 168 to 210 months' imprisonment  
22 is sufficient, but not --

23 THE COURT: Can I ask you a question about this?

24 MR. GENTILE: Certainly, Judge.

25 THE COURT: If that was going to be your position, why

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1 did you bother to let him plead to a lesser included? You tell  
2 me that you did this wonderful thing by relieving him of the  
3 ten-year mandatory minimum, and now you are arguing for a  
4 14-year sentence at the minimum. I don't understand what the  
5 benefit was of getting a plea to a (b)(1)(C) if we were going  
6 to argue for a sentence that is four years above the mandatory  
7 minimum for a (b)(1)(B).

8 MR. GENTILE: Certainly, your Honor.

9 It is the government's position that, with the  
10 guidelines the way they are structured, as opposed to the  
11 mandatory minimum of five or ten years, it would afford the  
12 defendant the opportunity to make his argument. We believe  
13 that the guidelines are appropriate, we believe that the --

14 THE COURT: I think the guidelines are a mess and you  
15 know that, Mr. Gentile, but this has to be the silliest, most  
16 counterintuitive argument that the government has ever made.  
17 In two consecutive sentences in your letter you say, We have  
18 given him this marvelous opportunity to relieve him of the  
19 mandatory minimum, now send him away for 14 to 18 years.

20 MR. GENTILE: As your Honor knows, it is the U.S.  
21 Attorney's office's position --

22 THE COURT: -- that the guidelines are always  
23 appropriate.

24 MR. GENTILE: That's correct, your Honor.

25 THE COURT: I know.

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1 MR. GENTILE: But having considered the defendant's  
2 conduct in the conspiracy, his role in the conspiracy, a  
3 significant sentence is warranted here, Judge.

4 THE COURT: I'm not denying that, but 168 months is  
5 not a significant sentence, it's a Draconian sentence.

6 MR. GENTILE: It is a significant sentence, and I will  
7 leave it up to the court to determine how significant it is.

8 Our position recognizes the defendant's role in the  
9 conspiracy as well as his offense conduct, Judge. While he is  
10 not a leader of the organization of which he was a member, his  
11 role was not insignificant either. The defendant was a  
12 pitcher.

13 THE COURT: He was a pitcher. He was a  
14 hand-to-hand --

15 MR. GENTILE: He was a hand-to-hand guy. He sold the  
16 drugs that the organization sold to its customers.

17 THE COURT: On the street.

18 MR. GENTILE: Well, within the building that --

19 THE COURT: "On the street" in this case means within  
20 the building.

21 MR. GENTILE: That's correct, your Honor, but he was  
22 also -- at times he acted as a supervisor, a manager of the  
23 lookouts who provided security for this building. And as your  
24 Honor is well aware, during the course of this investigation,  
25 during the course of this case, this building has been a

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1 scourge of the neighborhood in upper Manhattan for many years.

2 THE COURT: Indeed it has.

3 MR. GENTILE: It has. He acted as -- he positioned  
4 these lookouts. He paid them with money obtained from the DTO  
5 that the DTO earned through its sales of heroin. His position  
6 within the DTO is further confirmed by the dozens of phone  
7 calls that were intercepted by the government through court  
8 authorized wiretaps in which the defendant can be heard and  
9 recorded speaking about such things as customers getting sick  
10 from the heroin the DTO was selling and that they were fainting  
11 and kept falling. Those are quotes, judge. The volume of  
12 business that the DTO was doing on specific days, he spoke  
13 about taking -- he took instructions from supervisors, such as  
14 his codefendant Victor Hidalgo, about how much heroin to give  
15 other workers. He discussed the poor quality of one specific  
16 batch of heroin and that the customers were complaining, and he  
17 himself complained about the conduct of other organization  
18 members and how their conduct would get him arrested  
19 eventually. That's just a sample of some of the --

20 THE COURT: How is it that that last kind of  
21 conversation is indicative of his having a managerial type role  
22 in the conspiracy? I don't understand the logic of complaining  
23 to Hidalgo: These jerks out here are going to get me arrested.  
24 How does that make him a manager?

25 MR. GENTILE: I didn't mean to suggest that these

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1 conversations, these select conversations I'm offering as  
2 examples --

3 THE COURT: I'm assume you are offering the worst  
4 ones, that you are not selecting the least troublesome ones.  
5 You are trying to tell me about the worst ones.

6 (Continued on next page)

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1 MR. GENTILE: But not for the sole purpose of showing  
2 that he was a manager, Judge. I am just trying to show you  
3 what his involvement was.

4 THE COURT: He was in. They were all in.

5 MR. GENTILE: So these are just a sample of the dozens  
6 of conversations that were recorded. In nearly every one of  
7 the recorded conversations involving the defendant, he is  
8 speaking about the DTO's operations, in some form or another.  
9 And you're right, I provided the Court with the most  
10 significant ones. But as these conversations clearly show, the  
11 defendant was fully aware that the fentanyl-laced heroin that  
12 the organization was selling, that he was doing hand-to-hand  
13 transactions with, was making its customers ill. And despite  
14 that fact, the defendant continued to sell this highly  
15 dangerous and addictive drug.

16 With respect to his history and characteristics and  
17 the need for adequate deterrence, both specific and general,  
18 the defendant has 13 prior arrests, 11 convictions. Almost all  
19 of these arrests and convictions are, except one, for low-level  
20 marijuana sale and possession offenses. None of these offenses  
21 resulted in any significant jail time. So, clearly, Judge,  
22 these noncustodial or minimal periods of incarceration did  
23 nothing to deter him from reoffending or from engaging in more  
24 serious conduct, the evidence of which is the offense for which  
25 he is being sentenced today.

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1           The defendant's history is also indicative of his  
2       general disregard for the law. And that can also be seen in  
3       the half a dozen or so bench warrants that were issued  
4       throughout his criminal history where he failed to appear in  
5       court as required by the state court, and also the defendant's  
6       violation of his terms of release and at least one offense in  
7       his criminal history. For these reasons, your Honor, and for  
8       those cited in our submission, the government feels that a  
9       stipulated sentence within the stipulated guidelines range is  
10      appropriate.

11           MR. SAPONE: May I?

12           THE COURT: You may.

13           MR. SAPONE: So you know what your Honor is not going  
14      to get from this table? You are not going to get excuses. You  
15      are not going to get half-truths. You are going to get the  
16      truth. And the truth is, how dare you, Ricky Rosa, think that  
17      it was appropriate to do hand-to-hand sales from an apartment  
18      building in Manhattan?

19           These folks that have come to court are not making  
20      excuses for him. It's too many to introduce, but we have his  
21      mother, his girlfriend of 16 years. They all wrote letters.  
22      No one is for what Ricky Rosa did. No excuses. Wrong. Bad  
23      conduct. How dare you? How dare you?

24           The fact that Ricky Rosa is the sole person who brings  
25      all these folks -- these fine folks, by the way -- and himself

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1 to this courtroom is not the end of it; it's the beginning.  
2 Because our American criminal justice system, as your Honor  
3 knows as chief judge of the courthouse, reflects certain values  
4 of society, one of which is you don't sell drugs in the  
5 community, another of which is redemption.

6 The government's argument in a nutshell is there were  
7 overdoses, which is very sad and unfortunate. It is not to be  
8 soft-pedaled. It's horrible. One was fatal and we need to  
9 have deterrence. But I think we have to peel back the layers  
10 of the onion on that argument. This is going to be my  
11 twentieth year defending in this building, really across the  
12 street at 40 Foley, in the pre-Booker days, and I learned  
13 something from then Judge Martin. Judge Martin told me, as he  
14 was handing out a 23-year sentence of an organizer or leader of  
15 a DTO, the sentencing commission and Congress spends a lot of  
16 time, or had spent in the 1980s a lot of time in their hearings  
17 trying to figure this business out when promulgating the  
18 guidelines. And they talked about the guys on the top of the  
19 DTOs -- the organizers, the leaders, the people who deserve  
20 four-level enhancements; they drive fancy cars, they wear gold  
21 Rolex watches, and they tote guns.

22 So I guess the point is, your Honor, is that, yes, we  
23 have to send a message, and yes, this case is serious, but not  
24 every single co-conspirator, not every single defendant on the  
25 indictment has to be crushed by a sentence. Certain sentences

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1 should be reserved for certain kinds of offenders. This man is  
2 a pee-on. That's not to in any way minimize his role because  
3 these DTOs would not exist without pee-ons. But let's be clear  
4 about what he is. He is a pitcher. He is given a few hundred  
5 dollars to work a shift and to pitch hand-to-hands out of the  
6 building. He shouldn't have done it, but he is a pitcher.

7 The government and I do not want to wind up in a  
8 Fatico hearing, but he did not get a four-level enhancement, or  
9 a three-level enhancement, or even a two-level enhancement for  
10 supervisory role because he is a pitcher. He was told what to  
11 do. He took instructions. Did it happen on occasion where one  
12 of the mid-level managers would approach him and say, go and do  
13 this or go and say that? Yes. He is not the only pitcher who  
14 received such instruction from managers.

15 THE COURT: I would be shocked if he were.

16 MR. SAPONE: It doesn't make him a special person.

17 Was the heroin laced with fentanyl? Sadly, it was.  
18 But I remember 20 years ago it wasn't like this. It seems to  
19 me that every single one of these cases -- and it's a pleasure  
20 to be on the panel as of six years ago because I get to meet  
21 wonderful people like these -- we didn't have these fentanyl  
22 situations, but every case is like that now. There is nothing  
23 special about it, as sad as it is. That is just what it is.  
24 Heroin is a dangerous business.

25 So probation says, throw the guidelines to the side,

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1 draconian -- I am paraphrasing -- unreasonable, not sufficient  
2 but not greater than necessary. In fact, much more greater  
3 than necessary. They suggest five years; I suggest three. We  
4 are pretty close.

5 So let's get to his history and characteristics. The  
6 worst childhood? No. His mother did a wonderful job. His  
7 close-knit family did a wonderful job. It takes a village to  
8 raise a child. A ton of emotional trauma? Yes. Not nice that  
9 his father left the family, left the children and shackled up  
10 nearby and started a new family, and didn't send any money and  
11 didn't come and spend time with his boy. Not nice. But there  
12 is always redemption maybe for family situations too.

13 As he was growing up as a child, he hated himself, and  
14 he didn't want to do well, he didn't think he deserved it. So  
15 although Ricky Rosa was an All-Star basketball player and was  
16 lucky enough to get a scholarship, he blew it. He couldn't  
17 play basketball because he was angry. He looked in the mirror  
18 and didn't like what he saw. He didn't deserve to be  
19 successful. Because mom was ultra successful, but to her  
20 credit, worked all the time and just wasn't home. He didn't  
21 have a male role model. He had knuckleheads on the street  
22 corner talking about the easy life and, unfortunately, that's  
23 the path he chose, as he was self-medicating so that he didn't  
24 have to feel the bad feelings he felt. He was sad and he was  
25 pathetic. Yes, he is 34 years of age, but he is immature

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1 still. He still has a lot to learn. He never really grew up.

2 I juxtapose him with Mr. Garcia, who they look very  
3 similar. Mr. Garcia I believe got a seven-year sentence. They  
4 look very similar because they each have the same guidelines  
5 calculation. They each have the same criminal history  
6 category. They even both have 13 arrests. It's strikingly  
7 similar on the surface. But as we peel back the layers of that  
8 onion, we see that they are not the same, because Mr. Garcia --  
9 and I don't mean to put anyone down, the man was sentenced  
10 already -- was 62. So almost, give or take a bunch of years,  
11 double this man's age. He had more time to get it right and he  
12 didn't. He still has a chance, Ricky Rosa, to pick up the  
13 ashes and move on. And he has three children, 14, 12 and 5,  
14 two beautiful daughters who are in court and a little boy who  
15 it wasn't appropriate to bring him to court. Can Ricky Rosa  
16 redeem himself and be a father to those three children? Well,  
17 I have got about 15 people here shaking their head. They think  
18 so.

19 We know, and this lawyer knows, these years are very  
20 formative, very sensitive to be a child of 14, 12 and 5. Was  
21 he the best father in the world? He is not getting any awards,  
22 because he spent more than the last year in the MCC and not  
23 home where he belongs. Not the father of the year, but the  
24 letters attest to a man who loves his children, a man who wants  
25 to redeem himself and get home and work and pay taxes and give

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1 Erica money and raise those children so that they don't have to  
2 feel the feelings that Ricky Rosa felt when he was a  
3 five-year-old little boy, and when he was 12 and he was 14.

4 I am asking for an opportunity of redemption so that a  
5 34-year-old man, with a mentality of someone much younger  
6 because he never grew up, can have a chance to be a father.  
7 And finally, after 13 state court arrests, five of which were  
8 expunged because the marijuana laws called for it, and sealed,  
9 he finally gets it right, because federal court is a place  
10 where one could look around and say, You ain't in Kansas  
11 anymore. And thank you, Mr. Gentile, for the (b)(1)(C) offer  
12 because otherwise he would be stuck and your Honor would be  
13 stuck with a ten-year mandatory minimum. And then everyone  
14 would be crying more than they are now. So, yes, there is some  
15 grace here, and we appreciate what the government did in that  
16 vein.

17 So that man, Mr. Garcia, didn't learn. Yes, he had  
18 some health issues, and I think his girlfriend had died; very  
19 sad, I don't say it lightly. But he went to jail for 108  
20 months and that didn't teach him. And four months before this  
21 federal conspiracy case he got popped by the state for heroin  
22 sales, I think, and that didn't teach him.

23 Ricky Rosa's history is a bit different. His criminal  
24 history involves all one-pointers, which caps out at four  
25 criminal history points and a CHC III. It's a different

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1 history. They are all marijuana related, drug related, because  
2 he was using at the time. We have a trespass, but you and I  
3 have enough experience to know what that means. It means  
4 you're in a place you shouldn't be selling. So you're  
5 trespassing. It's drug related. It's marijuana related.  
6 That's the big difference.

7 And so I say we have a need to avoid disparity in  
8 sentences and Garcia got a seven-year sentence. I know this is  
9 an imperfect analysis at best, but if that man got a seven-year  
10 sentence, we are asking for a much different one because the  
11 circumstances are much different I think. And what gets me,  
12 what sticks in my craw is the 108-month sentence that didn't do  
13 the trick and the four-month prior drug arrest in the state  
14 that didn't do the trick. He got nailed in the feds  
15 notwithstanding. It's a much different defendant, I argue.

16 So, your Honor, we say it's a wake-up call because one  
17 thing that I am thinking that you're thinking is, yes, Mr. Rosa  
18 has a wonderful support mechanism. This is amazing. There is  
19 a whole village in this courtroom. But he knew these people  
20 when he was pitching, and they couldn't help him back then.  
21 These are the arguments that we are well aware of by now. But  
22 this is a wake-up call for everybody. There is some redemption  
23 for them, too, because they could see the signs and they didn't  
24 do anything about it. Is it their fault? Not at all, not at  
25 all their fault. But you know what? Things are going to be

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1 done differently when Ricky Rosa gets back home, and that's  
2 clear by the letters.

3 Erica Cabrera, if you would allow her a couple of  
4 minutes, would like to speak to your Honor, because what she  
5 said to me that she wants to say to you is that she sees a  
6 profound change in Ricky Rosa. She is allowed to see him once  
7 a week and she goes every single time, doesn't miss, unless one  
8 of the kids is spiking a fever. And she sees a tremendous  
9 difference in his affect, in his demeanor, in what comes out of  
10 his mouth, and the fact that he already has a plan, if he gets  
11 the few-year sentence that I am asking for, to be a porter of a  
12 building. Well, that's ironic. At one point he is pitching  
13 out of a building and now he wants to be a porter of a  
14 building. But you know what, we can take the bad in this  
15 criminal justice and we can make it good. He did a bad thing  
16 in a building and he plans on doing a very good thing. He is  
17 going to clean up in a building, and I think that's wonderful  
18 if he could actually land that job through his brother-in-law.

19 I look at the kinds of sentences available. We can do  
20 a lot on supervised release here, because maybe he should  
21 finally get the help he never got for the bad feelings that he  
22 grew up with as a child. Because one thing this lawyer knows  
23 is that when people come to my office, they have substance  
24 abuse issues by and large, and they hate themselves, and then  
25 they wind up making the terrible mistakes that land them in

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1 court. That's usually what it is. Never got the right help.  
2 Now he will have a chance to do that. The kinds of sentences  
3 available.

4 I think the probation department is wonderful in what  
5 they can do to help people turn around. One way to look at it  
6 is to say, forget about all these people, forget about the  
7 concept of redemption, and let's just stick him in jail for 168  
8 months. That's one way to approach sentencing. But there is  
9 another way, and that way is a softer, gentler, kinder way.  
10 And that is, he may not be a high-powered guy who comes in here  
11 in some big fancy white collar case; he is the bottom of the  
12 barrel, the drug cases, but he is no less valuable, and there  
13 is no less potential for a good future. He is only 34.

14 So, your Honor, I want to end with this. We have to  
15 promote respect for the law, and we have to sufficiently punish  
16 people at sentencing. And sometimes throwing the book at  
17 defendants is appropriate; they are not going to get it unless  
18 that happens. Well, the longest sentence this man has ever  
19 served is not nine years or any fraction of it; it's ten days  
20 waiting on Rikers Island in the state court system. So it's  
21 1,085 days less than what I am proposing in the three-year  
22 sentence. It's literally 100 times less than what I am  
23 proposing. I am proposing a sentence 100 times greater than he  
24 has ever faced before, and maybe that will do the trick.

25 Erica says the last year did the trick, that she wants

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1 him to come home now, and I wouldn't put that in my sentence  
2 memo and wouldn't ask you for it; it's unreasonable, a year or  
3 so is unreasonable. I don't think 36 months is a slap on the  
4 wrist for someone who has never suffered a prison sentence.  
5 When we talk about general deterrence, it's not the length of  
6 the sentence that deters, it's the certainty. And any pitcher  
7 on the block in Washington Heights who finds out about this  
8 case, and no matter how thick the sentence memo was and how  
9 voluminous and numerous the letters, Ricky Rosa still went to  
10 prison for years and years, no one is going to sign up for that  
11 pitching job, whether it's three years or four years or five.  
12 It's the certainty.

13 THE COURT: Well, OK.

14 MR. SAPONE: To make a few hundred dollars per  
15 shift --

16 THE COURT: In this line of work, I find that general  
17 deterrence is not a particularly salient concept. There will  
18 always be somebody who will sign up.

19 MR. SAPONE: But it wouldn't be because your sentence  
20 is --

21 THE COURT: Correct. They won't give a rat about my  
22 sentence.

23 MR. SAPONE: Enough said on that. I want to end with,  
24 we have to promote respect for the law and sometimes a  
25 heavy-handed sentence does it. The community looks at the

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1 sentence and respects it. Other times promoting respect for  
2 the law is leniency and given the chance at redemption, and  
3 then a community of people respect that even more.

4 Thank you for listening to me and reading my papers.

5 THE COURT: Thank you, Mr. Sapone.

6 Mr. Gentile, anything else you want to say?

7 MR. GENTILE: Your Honor, the only other thing I would  
8 add is that throughout the course of the defendant's fairly  
9 extensive criminal history, he has been afforded leniency in  
10 almost every sentence he has received. That's by the  
11 defendant's own admission just now. He has not received a  
12 significant sentence.

13 THE COURT: Oh, he is going to get a significant  
14 sentence.

15 MR. GENTILE: I will leave it at that, Judge.

16 MR. SAPONE: Can Erica Cabrera say a few words?

17 THE COURT: If she must.

18 MR. SAPONE: Keep it short.

19 THE COURT: I have read your letter, ma'am.

20 MS. CABRERA: Yes. What I would like to say is, over  
21 the past year and couple of months Ricky has been gone, it has  
22 been a big strain on the family. I have two daughters, one is  
23 suffering from anxiety. My five-year-old son has separation  
24 anxiety. I can't tell him I am going to work because he  
25 screams and cries and he wants his father.

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1           What I can say is just from what I know. Ricky, I  
2           know him for 16 years and probably better than anyone else. I  
3           really feel like, because of the children, Ricky is going to  
4           straighten up. And he did have children before this, but he  
5           has never been to prison before, not to this extent. We have  
6           never been away from each other more than a day either. And  
7           his mother, he wants to come and take care of her as well, and  
8           like he said, redeem himself.

9           Thank you.

10          THE COURT: Thank you for coming down today.

11          Mr. Rosa, do you have anything you want to say to me  
12         before I sentence you?

13          THE DEFENDANT: Yes, your Honor.

14          I just want to say that I am truly, truly sorry. I  
15         apologize. And with all my heart, I really truly, truly regret  
16         everything that I have done. My beautiful mother raised me  
17         with great moral and dignity, and she taught me what is right  
18         and what is wrong. She is a beautiful soul, which I believe  
19         she has passed that to me. I definitely and can't deny that  
20         the act I partook in was bad and disgusting, but in all  
21         reality -- I am tremendously nervous now.

22          THE COURT: That's OK.

23          THE DEFENDANT: I don't make any excuses or anything  
24         like that. I understand what I did. I was hurting my  
25         community and destroying my community, a beautiful community

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1 which I was raised in. And through you and the Lord, I just  
2 want to honestly apologize to the people, kids and family, that  
3 I selfishly affected. I selfishly was only worried about my  
4 gains and needs, and for that I truly want to apologize to my  
5 babies, my wife and my mom, because I was selfish, without  
6 giving a thought to how much I was hurting them instead of  
7 helping by all my bad decisions. It hurts like hell. There is  
8 literally no words that can explain my hurt and pain for taking  
9 myself away from my kids and my wife.

10 I just want to let you know, your Honor, that I truly  
11 regret everything that I have done. This has been beyond a  
12 lesson learned. I will never, ever, ever break the law ever  
13 again in my life. I will never do anything to take myself away  
14 from my kids. I truly would never break the law so much that I  
15 won't even jaywalk on the street just to avoid any problem with  
16 the law. I will never, ever hurt my beautiful community  
17 because I actually want to be a pillar to my community. I have  
18 a very close friend in basketball and tutors young kids that  
19 are student athletes. And I take my kids to this program with  
20 my friends every weekend, and he always tells me, whenever  
21 you're ready, Ricky, you have the opportunity to join us. But  
22 I never jumped on the opportunity, for obvious reasons. I just  
23 really want to help. I truly just want to help.

24 I had a lot of time in my hand while I was  
25 incarcerated and all I think about is how can I help others and

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1 my family. And with all the time I had away from them and not  
2 being a part of society, I just really want -- I just really  
3 want to be able to help and strive and show others that I have  
4 learned my lesson, and I can teach kids in my community, and my  
5 beautiful babies and my mom and my wife that I can strive in  
6 life by pure hard work and dedication. I completely understand  
7 the nature of my case and the situation I am in, and I just  
8 think, I truly believe that the Lord put me in this situation  
9 because I will make the best of it and I will overcome it.

10 Thank you for listening to me and I appreciate it.

11 THE COURT: Have a seat.

12 Let me start out by saying that the Lord did not put  
13 you in this situation; you put you you in this situation. I am  
14 sure the Lord is not terribly pleased that you put yourself in  
15 this situation, but that's all between you and the Lord. What  
16 is between you and me is sentencing.

17 Now, you were originally arrested on as serious a drug  
18 felony as exists. It was a (b)(1)(A) originally. It was a  
19 crime that had a ten-year mandatory minimum, which meant I  
20 would have had no choice but to sentence you to at least ten  
21 years, at least 120 months in prison; and that was because of  
22 the amount of drugs that the organization had run through the  
23 building. And you, of course, weren't involved in the  
24 distribution of all of those drugs, you were involved in the  
25 distribution of a relatively small fraction of those drugs, but

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1 you were part of an organization that was a scourge of a  
2 building and that passed out a truly hideous quantity of drugs  
3 to a lot of people, ruining a lot of lives, making them, as you  
4 have never been because you weren't a heroin addict, physical  
5 and economic slaves to the drug and the people who could supply  
6 it. And you knew that what you were doing was wrong, and you  
7 did it for a long time. And I think it is an incredibly  
8 serious crime for which you have not nearly yet done enough  
9 time.

10 I know how desperate your family is to have you home.  
11 It breaks my heart to see your daughter cry. It breaks my  
12 heart that this woman, who has devoted her whole life to you,  
13 and to your children, should have to come into this courthouse  
14 and plead for you. It breaks my heart that your mother, who  
15 loved you and cared for you through adversity in her own life,  
16 has to see you come to this. But come to it you have, and you  
17 have of your own free will. And you will be appropriately  
18 punished for a crime, the gravity of which I simply cannot  
19 downplay. I appreciate that you are not the individual  
20 apparently who was responsible for distributing the heroin that  
21 resulted in the death, but you knew it was bad stuff and you  
22 kept on doing it anyway. And it would not be appropriate,  
23 given the nature and the circumstances of the crime, including  
24 the fact that it terrorized an entire building, for you to go  
25 home today.

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1           The government's position, however, strikes me as  
2     utterly nonsensical. If the government wanted you punished as  
3     a (b)(1)(A), I don't understand why the government offered a  
4     plea to a (b)(1)(C). If you had pleaded to a (b)(1)(A), I  
5     would be thinking seriously about a ten-year mandatory minimum  
6     as opposed to this guideline. The fact that the government  
7     offered a (b)(1)(C) indicates to me that your position in the  
8     hierarchy of this organization was way down toward the bottom,  
9     and a 168-month sentence is utterly and completely inconsistent  
10    with being way down toward the bottom of the hierarchy of this  
11    organization. It just is. This is a case that cries out for a  
12    non-guideline sentence, and since there is no mandatory  
13    minimum, that guideline sentence should be somewhere below what  
14    the mandatory minimum would have been.

15           I have great respect for and faith in my presentence  
16    probation officers. They do great work. And they have thought  
17    about your case in great detail, and they have concluded that  
18    you're not as high up on the totem pole as the guy I gave 72  
19    months to, who was 62 years old, and that it would be  
20    appropriate to sentence you to a little bit less time than  
21    that. I think that's about right. I think that probation's  
22    recommendation of five years, which would have been the  
23    mandatory minimum for the (b)(1)(B), is kind of spot on. It's  
24    the right amount of time for someone who was at your low level  
25    in the organization, but who has your criminal history, but who

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1 has your extensive past. You need to spend time in jail. Your  
2 family doesn't need it, your friends don't need it, but you  
3 need it. And society needs for you to do that too.

4 I am not concerned that if the word gets out on the  
5 street in Washington Heights that people will think it's a walk  
6 in the park to come to federal court on a drug charge. I am  
7 not concerned about that at all. It is a significant sentence.  
8 It's a greater sentence than this defendant has ever faced  
9 before. It is a greater sentence than many people face. And  
10 the fact is his state court drug crimes, given the number of  
11 his state court drug crimes -- I was a state court judge; I  
12 have some knowledge of how state court charging and sentencing  
13 works -- his state court drug crimes are very, very petty  
14 crimes if he never managed to get himself arrested on a felony  
15 drug charge, which doesn't take a lot. You don't have to sell  
16 a lot in order to get charged with a B felony in the state  
17 court, and the second time that happens you're looking at four  
18 and a half to nine.

19 So you made a terrible mistake. Your first big score  
20 was in the wrong place and at the wrong time, at a time when  
21 our fine U.S. Attorney's Office was looking hard and the FBI  
22 and the DEA were looking hard at drug operations like the one  
23 that you got involved with. And you got caught and you will  
24 pay.

25 I have reviewed the presentence report. I accept and

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1 adopt as my findings its description of the offense and the  
2 offense conduct. Its calculation of the guidelines is correct.  
3 The total offense level is 33, given that the defendant has  
4 accepted responsibility for pretty much the entirety of the  
5 drug operations in the building, but there is no question that  
6 he was not himself responsible for even a large fraction of  
7 that amount.

8 The defendant's criminal history is correctly  
9 calculated. The criminal history score is four points, because  
10 we have a lot of arrests but a lot of no-point convictions, and  
11 so the defendant is in Criminal History Category III.

12 I accept and adopt as my findings the offender  
13 characteristics that are set forth beginning at paragraph 68 of  
14 the presentence report.

15 I have read the letters that Mr. Sapone submitted.  
16 They are very moving. You are obviously, Mr. Rosa, someone who  
17 has caused a lot of people to love you and to care about you,  
18 and to want to help you, and some of them are sitting here  
19 today. You have messed up some of their lives pretty badly,  
20 for which you will have to atone. But I hope that that support  
21 group of people will be around when you are released from  
22 prison to help you get started in a more appropriate lifestyle,  
23 in a more appropriate line of work.

24 I note that before Mr. Sapone, I suspect, gave you a  
25 talking to, you were resistant about drug treatment. And you

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1 are going to get drug treatment; you are going to get it  
2 whether you want it or not. And you need to understand my  
3 attitude about people who are resistant to drug treatment or to  
4 any condition that I set on them as part of their sentence.  
5 You resist at your peril. You resist at your peril. Because  
6 if they bring you back in front of me again, you will regret  
7 it.

8 Would you please stand.

9 Under Docket No. 18 Cr. 802, total offense level 33,  
10 criminal history category of III, I am taking the  
11 recommendation of probation and imposing a variance sentence.  
12 I hereby sentence you, Ricky Rosa, to be remanded to the  
13 custody of the attorney general of the United States and Bureau  
14 of Prisons for a term of 60 months, to be followed by a term of  
15 five years' supervised release. Four was recommended, five is  
16 imposed. There is no recommendation for a fine and I am not  
17 imposing one. The defendant has no ability to pay.  
18 Restitution is not applicable.

19 Is the government seeking forfeiture from Mr. Rosa?

20 MR. GENTILE: It is not.

21 THE COURT: You are required to pay a special  
22 assessment -- that's court costs -- of \$100. If you don't have  
23 \$100, it will be deducted from your prison wages at the rate of  
24 \$25 per calendar quarter or 50 percent of your gross monthly  
25 earnings if you are in a UNICOR grade 1 through 4 work program,

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1 which I hope you will be put in because that's a great place to  
2 learn a skill that you can make use of when you get out.

3 Recommendation for place of incarceration, Mr. Sapone.

4 MR. SAPONE: Yes. We are looking at Fort Dix or  
5 Danbury, if they have space.

6 THE COURT: Certainly as close as possible to the New  
7 York City metropolitan area. Mr. Rosa has an unusually strong  
8 family support system. This is not a defendant who has nine  
9 children by eight baby mommas. This is a gentleman who is in a  
10 long-term stable relationship with a woman, and they have three  
11 children who they have raised together. This is an intact  
12 family unit here. It is the best thing for this family if he  
13 remain in the New York City metropolitan area so that his  
14 family can remain in physical visual contact with him over the  
15 course of his period of incarceration. And it will also have  
16 rehabilitative repercussions as well, I suspect, but I feel  
17 particularly strongly in Mr. Rosa's case that the family  
18 considerations warrant his staying here in the New York City  
19 metropolitan area.

20 So, sir, when you get out of prison, you have to be on  
21 supervised release for five years. Supervised release is sort  
22 of like being on probation in the state system, your being on  
23 parole in the state system, except it's not because we are  
24 really, really serious about it. That means for five years you  
25 have to report to a United States probation officer, whose

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1 office is located in this building. And you have to do that on  
2 a regular basis, and you have to do everything the probation  
3 officer tells you to do, and you can't do anything the  
4 probation officer tells you you can't do. The probation  
5 officer has pretty absolute authority over you, and you need to  
6 understand that; and maybe you won't like it, but that doesn't  
7 matter, you still have to do it.

8 You have to report to the probation office in this  
9 building within 72 hours of your release from imprisonment.  
10 After reporting to the office, you will receive instructions  
11 for who your officer will be and how frequently you must  
12 report. And then you must report on that schedule, on that  
13 basis, as instructed.

14 You are authorized to live in the Southern District of  
15 New York, and you must not knowingly leave the Southern  
16 District of New York without first getting permission from your  
17 court or the probation officer. You must answer truthfully all  
18 questions put to you by the probation officer. You must live  
19 at a place approved by your probation officer. One of the  
20 things about that five years of supervised release is the  
21 probation officer gets to decide whether you can live where you  
22 want to live or not. And if you are going to change anything  
23 about your living arrangements -- the people you live with,  
24 where you live, anything like that -- you have to notify the  
25 probation officer at least ten days before making the change,

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1 because the probation officer has to have time to check things  
2 out and decide whether he wants to veto them or not.

3 If there is an emergency, there is a fire in the  
4 neighborhood, they make you evacuate your apartment, then you  
5 have to call your probation officer within 72 hours and explain  
6 where you are and why you're not where you're supposed to be.

7 You have to allow the probation officer to visit you  
8 in your home at any time, or elsewhere, at work, and you have  
9 to permit the probation officer to take any items that are  
10 prohibited by the conditions of your supervision that he or she  
11 observes in plain view.

12 You have to work at least 30 hours a week at a lawful  
13 type of employment unless you're excused from doing so, which I  
14 very much doubt you will be. If you don't have full-time  
15 employment, you have to try and find it. Usually the only  
16 reason we excuse people is if they are full time in school.

17 If you plan to change where you work or anything about  
18 your position or your job responsibilities, you have to tell  
19 your probation officer ten days before making that change,  
20 because the probation officer can for those five years decide  
21 that's not a job that's appropriate for you, that's not a place  
22 where it would be useful for you to work. Again, if notifying  
23 the probation officer at least ten days in advance is not  
24 possible, if the business closes down so you no longer have a  
25 job, you have three days, 72 hours, to notify your probation

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1 officer.

2 Now, all of those things are about the conditions of  
3 your life.

4 You may not commit another crime -- federal, state,  
5 local. I don't care if it's a felony or a misdemeanor or a  
6 violation, you may not commit another crime. If you commit  
7 another crime, whatever court is in charge of that crime will  
8 punish you for committing that crime. I will then punish you  
9 for violating the terms of your supervised release. And that's  
10 two punishments and they won't be concurrent.

11 You must not unlawfully possess any controlled  
12 substance.

13 You must refrain from the unlawful use of controlled  
14 substances.

15 And that will include your participation in an  
16 outpatient treatment program approved by the United States  
17 probation office, which will include testing to determine  
18 whether you have reverted to using controlled substances. By  
19 the way, marijuana is a controlled substance.

20 You must contribute to the costs of services rendered  
21 based on your ability to pay or the availability of third-party  
22 payment.

23 I authorize the release of available drug treatment  
24 evaluations and reports, including the presentence  
25 investigation report, to your substance abuse treatment

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1 provider.

2 I am also directing that you participate in a mental  
3 health program, which is not what was recommended by probation,  
4 but it's recommended by me, under the same terms and conditions  
5 as the substance abuse program.

6 And if you don't participate in these programs, sir,  
7 if you rebel, if you decide this is not what you want to do and  
8 you don't go to the sessions and you don't cooperate, you will  
9 be violated. They will violate the terms of your supervised  
10 release, and we will haul you right back in front of me and we  
11 will decide whether, since you don't want to do what I tell you  
12 to do, you wouldn't be better off in jail again.

13 You have to cooperate in the collection of DNA,  
14 genetic identifying material, as directed by your probation  
15 officer.

16 You may not communicate or interact with someone who  
17 you know is engaged in criminal activity. If you know someone  
18 who has been convicted of a felony, and obviously you do know  
19 quite a few people who have been convicted of a felony, you may  
20 not knowingly communicate or interact with that person without  
21 first getting the permission of your probation officer. The  
22 permission may or may not be forthcoming. Fortunately for you,  
23 you have a large group of people who have not been convicted of  
24 felonies who really want to be part of your life.

25 If you are arrested or if you are questioned by any

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1 law enforcement officer, you must notify your probation officer  
2 within 72 hours. You must notify your probation officer within  
3 72 hours.

4 You must not own, possess, or have access to a  
5 firearm, ammunition, any destructive device or dangerous  
6 weapon.

7 You must not act or make any agreement with a law  
8 enforcement agency to act as a confidential human source or as  
9 an informant without first getting the permission of the Court.

10 And as a general rule, you must follow all of the  
11 instructions of your probation officer.

12 Now, one more thing. You shall submit your person and  
13 any property, residence, vehicle, papers, computer, other  
14 electronic communication or data storage devices, Cloud storage  
15 or media, and your personal effects to a search if your  
16 probation officer has reasonable suspicion that you have  
17 committed a violation of the conditions of your supervision or  
18 some form of unlawful conduct. And the probation officer may  
19 be assisted in carrying out that search by law enforcement  
20 agents.

21 Such search is to be conducted at a reasonable time  
22 and in a reasonable manner. But your failure to submit to  
23 search will be grounds for revocation of your supervised  
24 release. And you need to warn the people that you live with  
25 that if your probation officer thinks you're in trouble, the

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1 probation officer can come in and search. And by the way, I  
2 just signed the warrant. What I just said is the warrant.  
3 There doesn't need to be any other warrant.

4 OK. You can have a seat.

5 I assume that the defendant waived his right to appeal  
6 from that sentence.

7 MR. SAPONE: Yes. It's a standard plea agreement,  
8 your Honor.

9 When you have a moment to give me a moment, I would  
10 like to say one other thing.

11 THE COURT: Say anything you want.

12 MR. SAPONE: I don't think we should wait until Ricky  
13 Rosa is released to get drug rehab. I think the residential  
14 drug and alcohol program within --

15 THE COURT: I am not recommending him for the 500-hour  
16 program.

17 MR. SAPONE: Does that suggest that if the BOP --

18 THE COURT: If the BOP thinks he should get it, the  
19 BOP should give it to him. The BOP should give Mr. Rosa any  
20 drug treatment option that it thinks will be beneficial to Mr.  
21 Rosa, but that's the BOP's decision in this case, not mine. It  
22 didn't sound like Mr. Rosa wanted much help, but maybe he has  
23 come to his senses.

24 MR. SAPONE: He has, your Honor. Thank you.

25 THE COURT: Mr. Rosa, do you recall that at the time

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1 you pled guilty you also signed a letter of agreement with the  
2 government?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you recall that in that letter it said  
5 that if I sentenced you to 210 months or less in prison, you  
6 would not take an appeal from your sentence or file a lawsuit  
7 alleging that your sentence was illegal?

8 THE DEFENDANT: Yes.

9 THE COURT: And did Mr. Sapone explain to you at the  
10 time you signed the letter that by signing that letter, you  
11 were giving up a right, that you had a right to take an appeal  
12 from your sentence as long as your sentence wasn't too high?

13 THE DEFENDANT: Yeah.

14 THE COURT: And did you sign the letter of your own  
15 free will?

16 THE DEFENDANT: Yeah.

17 THE COURT: Did anyone threaten you or coerce you or  
18 exert any kind of improper pressure in order to get you to sign  
19 that letter?

20 THE DEFENDANT: No.

21 THE COURT: OK. I have sentenced you to 60 months. I  
22 think we can agree that 60 months is less than 210 months,  
23 right?

24 THE DEFENDANT: Yeah.

25 THE COURT: So it's my understanding that you have

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1 waived your right to appeal. Is that also your understanding?

2 THE DEFENDANT: Yes.

3 THE COURT: Because I didn't sentence you to 168  
4 months, the government technically has the right to take an  
5 appeal from your sentence if it believes the sentence to be  
6 unreasonable. If the government were to file an appeal from  
7 your sentence, you would have the right to counsel, the right  
8 to have a lawyer appointed for you if you did not have the  
9 money to hire a lawyer.

10 Do you understand that?

11 THE DEFENDANT: Yeah.

12 THE COURT: Fine.

13 MR. SAPONE: One last thing. May I?

14 THE COURT: Yes, Mr. Sapone.

15 MR. SAPONE: So I think that when people do something  
16 nice for someone, they should thank those people. Could he  
17 address the folks that came out and supported him?

18 THE COURT: I wish he would. I am not the person he  
19 needs to apologize to.

20 MR. SAPONE: Can he turn around?

21 THE COURT: Yes.

22 THE DEFENDANT: I thank you. I love you for coming.  
23 I wish I had more time to speak to you. I love you, baby.

24 THE COURT: OK.

25 MR. SAPONE: Thank you, your Honor.

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1 THE COURT: All right. Anything else from the  
2 government?

3 MR. GENTILE: No, your Honor.

4 THE COURT: From the defendant.

5 MR. SAPONE: No. Thank you, your Honor.

6 THE COURT: These proceedings are closed.

7 (Adjourned)  
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